

Original

No. 6079.

IN THE
SUPREME COURT
OF THE
STATE OF CALIFORNIA.

M. Z. CHAMBERLAIN,

Plaintiff and Respondent,

vs.

PACIFIC WOOL GROWING CO.,

Defendant and Appellant.

Appellant's Points and Authorities.

J. C. BATES,

Attorney for Appellant.

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STATEMENT OF CASE.

This is an appeal from the JUDGMENT and ORDER denying defendant a New Trial, (Trans., folios 51 and 52,) and brings up for review, rulings of the trial Court, as appears from Judgment Roll and Bill of Exceptions.

Trans., folio 25.

The Complaint is drawn in a *double* aspect, containing two counts or separate causes of action,

(Trans., folios 2 and 7,) each for eight hundred and fifty dollars, U. S. gold coin, with prayer for Judgment for seventeen hundred dollars.

Trans., folio 8.

The first count is based on a promissory note, and the second for money lent, etc., on the 29th day of July, A. D. 1875.

Trans., folios 4 and 7.

There was a general and special demurrer interposed by defendant, (Trans., folio 10-13,) which being overruled, (Trans., folio 14,) defendant answered, traversing all allegations of complaint, pleading fraud, want of consideration, etc., with an averment that there was in truth and in fact but one single cause of action for eight hundred and fifty dollars relied upon by plaintiff, and that defendant would require her to elect on the trial which count or cause of action she would rely upon, etc.

Trans., folio 18.

It turned out, in course of the trial, that one D. P. Sackett was the President and Trustee of said corporation defendant, during the time of this transaction, and was also the agent of the plaintiff at the same time in making the loan, she being absent in Europe, and that he acted in a double or triple capacity, viz., that of *agent* for plaintiff in loaning the money, that of *agent* for defendant in borrowing the money without consulting with plaintiff or any of the trustees or

directors of the Company, (Trans., folio 27,) and that the larger part of the money was applied for said agent's *own* benefit to pay his salary.

Trans., folio 30.

I.

Errors upon Judgment Roll.

The first *count* or cause of action in Complaint, upon the alleged promissory note, is fatally defective upon its face, and the Demurrer should have been sustained to that cause of action.

Fisher *v.* Eldridge, 12 Gray, 474.

Bradlee *v.* Boston Glass Co., 16 Pick., 350.

Slawson *v.* Loring, 5 Allen, 343.

Haverill M. F. I. Co. *v.* Newhall, 1 Allen, 130.

Seaver *v.* Coburn, 10 Cush., 324.

Hills *v.* Bannister, 8 Cow., 33.

Moss *v.* Livingston, 4 Com. N. Y., 210

De Witt *v.* Walton, 5 Seld., 571.

Hall *v.* Auburn T. Co., 27 Cal., 256.

Carpenter *v.* Biggs, 46 Cal., 94.

Did Sackett hold note for plaintiff or defendant?

Trans., folio 28. *✓*

II.

The second cause of action is *fatally* defective, as it contains no averment that defendant is or

was a corporation, and cannot be helped out by the allegation in first count. Each cause of action *must be separately stated*.

C. C. P., sec. 427.
 Waits' N. Y. Code, sec. 167.
 Boles v. Cohen, 15 Cal., 150.
 Buckingham v. Waters, 14 Cal., 147.
 Shelby v. Houston, 38 Cal., 419.
 Johnson v. King, 50 Cal., 136.
 Dewey v. Ward, 12 How. P., 422.
 Landau v. Levy, 1 Abb. P., 376.
 Henderson v. Jackson, 9 Abb. P., N. S., 296.

III.

Errors Occurring at the Trial.

It turned out on the trial that there was but one transaction only between the parties, and that was for eight hundred and fifty dollars, and on the promissory note; therefore, the Court erred in denying defendant's motion requiring plaintiff to elect on which CAUSE of action or count she rested her case or relied upon.

For a single cause of action only, one count or statement is allowed.

C. C. P., sec. 426.
 Voorhies' N. Y. Code, sec. 142, page 227.
 Nash v. McCauley, 9 Abb. P., 159.
 Lackey v. Vanderbilt, 10 How. P., 161.

Sipperley v. Troy and Boston R. R. Co., 9 How. P., 83.
 Churchill v. Churchill, 9 How. P., 552.
 Young v. Edwards, 11 How. P., 201.
 Dunning v. Thomas, 11 How. P., 283.
 Whittier v. Bates, 2 Abb. Prac., 478.
 Dickens v. N. Y. C. R. R. Co., 13 How. P., 229.
 Stockbridge Iron Co. v. Nellen, 5 How. P., 439.
 Watson v. S. F. and H. B. R. R. Co., 50 Cal., 524.

Chitty on Plead., 9 Am. ed., vol. i., page 107, Reg. Gen. H. T. 4, G. 4, prohibits more than *one count* upon the *same transaction*.

IV.

Transaction Void on ground of Public Policy.

The whole transaction was through one D. P. Sackett, who was attempting to act as the *agent* of both parties, without consulting with either, (Trans., folio 26-27,) and is void on the ground of PUBLIC POLICY, which prohibits a person from acting as agent of *both parties*.

C. C., § 2306, § 2322.
 Story on Agency, § 210, § 211, and cases cited.
 Story Eq. Juris., § 310, § 315, § 316, § 316 (*a.*)

The rule applicable to agency is thus stated by C. J. Selden, in the case of *Claffin v. F. and C. Bank*, 25 N. Y., 294:

"It is a well settled rule of agency, to which I apprehend there is no exception, that no person can act as the agent of both parties to a contract, although he himself may have no interest on either side; nor can he act as agent in regard to a contract in which he has any interest, or to which he is a party on the side opposite to his principal * * *."

N. Y. C. Ins. Co. v. N. P. Ins. Co., 14 N. Y.

85, and cases there cited on page 91.

Copeland v. Mer. Ins. Co., 6 Pick., 198.

Luke, chap. xvi. verse 13:

"Ουδεις οικειης δυναται δυσι κυριοις δελεειν."

44 Cal., 112-317.

V.

No Subsequent Ratification.

Said Sackett having individually reaped benefits from said transaction, there could be no effectual ratification between the parties; nor could said Sackett, in such position, give the casting vote to ratify such transaction.

Trans., folio 34.

Story on Agency, § 251 (a.)

Butts v. Wood, 37 N. Y., p. 318.

Wash. Bank v. Lewis, 22 Pick., 31, 32.

Angel on Corporations, §§ 304 and 305.

"To give validity to a ratification, a full knowledge of all the material facts and circumstances attending the transaction is necessary * * *."

Angel on Corp., § 517.

C. C., § 2312 and § 2314.

Manifestly, Court committed error in sustaining plaintiff's objections.

Trans., folios 36, 41, 43.

NOTICE to agent is notice to principal.

Angel on Corporations, § 305.

Therefore, plaintiff is in no better position than her agent would be had said promissory note been made to himself.

Wilbur v. Lynde & Hough, 51 Cal., 292.

Said loan was not essential to transaction of its ordinary affairs, or for purposes of the corporation defendant.

C. C., § 354, sub. 8.

I submit, judgment should be reversed, with directions to Court below to dismiss the case.

J. C. BATES.

For Appellant.

May 25, 1878.

Service by copy a mether
this 27th day of May AD 1848
Surrey & Ball
attys for Respondent